

two groups of wires are of a material having shape memory, and wherein the shape memory of the material of one group of wires is different from the shape memory of another group of wires.

**Claim of application made prior to one year after patent issuance:**

9. A permanent self-expanding stent having a generally tubular body of a predetermined fabricated diameter comprised, at about normal body temperatures, of a shape-memory, superelastic, austenitic alloy portion and a shape memory, martensitic alloy portion, the superelastic austenitic alloy portion having a transition temperature from martensitic to austenitic less than body temperature while the martensitic alloy portion has a transition temperature from martensitic to austenitic substantially greater than body temperature, the martensitic alloy portion and superelastic austenitic alloy portion being constructed, arranged and associated with respect to each other in comprising the stent such that the two alloy portions act in combination to allow, upon transformation of the austenitic alloy portion to martensitic at a temperature below the transition temperature, constraint of the stent to a deployment diameter smaller than the predetermined fabricated diameter and upon transformation of the austenite alloy portion from martensite back to austenite to self-expand the stent back to about the predetermined fabricated diameter at temperatures in excess of the transition temperature of the austenitic superelastic portion, the shape memory of the superelastic austenitic portion tending to form the stent to a larger diameter due to its shape memory but being restrained therefrom by the martensitic alloy portion whereby the austenitic alloy portion can be deformed by external force without plastic deformation along with the martensitic portion to an enlarged stent diameter beyond that of the self-expanded diameter.

12. The stent of claim 9 wherein the first and second portions are in the form of strands.

The statute 35 U.S.C. 135(b) states:

A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such claim is made prior to one year from the date on which the patent was granted.

Claims 9 and 12 listed above were made in the Patent Cooperation Treaty application filed May 18, 1995 in the US Receiving Office, and were therefore made well prior to the U.S. filing date of August 18, 1995 of Freitag U.S. Patent 5,601,593 let alone within one

year of Freitag's February 11, 1997 issue date. The statute clearly requires only that the claims have been made before February 11, 1998. Claims 9 and 12 qualify as having been made within the requirements of the statute.

Finally, the Office Action has taken the position that no prior claim was claiming the same or substantially the same subject matter of Freitag. The Office Action position was that the prior claims did not claim "two groups of wires meshed together" and "two groups of wires of material having different shape memories."

The patent application at page 9, line 30 to page 10, line 2 states as follows:  
Referring now to Figure 6, a braided or interwoven construction is shown similar in construction to that of the embodiment of Figure 1. In this embodiment, strands 62 extending to the right in Figure 6 are an alloy in the austenitic state whereas strands 64 extending to the left in Figure 6 are an alloy in the martensitic state.

Figure 6 from the application, shown below next to Figure 3 from Freitag, shows that the inventions are the same. Freitag's "two groups of wires meshed together" is exactly the same as applicant's invention as seen by a comparison of the figures. Applicant has strands 62 and 64 as the groups of wires meshed together while Freitag has wires 14, 15. In both the application and Freitag patent, the strands 62, 64 and wires 14, 15 are of different shape memories.

